

Docket No.: AB-209U

**Remarks**

Applicant, herein, has amended claim 19 and canceled claims 25 and 26. Four (4) claims remain pending in the application, claims 19, 20, 23 and 24, of which claim 19 is independent. Applicant respectfully requests reconsideration of the pending claims, in view of the claim amendments above and comments below.

***Allowable Subject Matter***

Applicant acknowledges with appreciation that, on page 5 of the Office action mailed April 22, 2004, the Examiner indicated that claim 24 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Specification and related Claim Objections***

On page 2 of the Office action, the Examiner objected to the specification, stating:

Applicant has evoked sixth paragraph, means-plus-function language to define Applicant's invention. Therefore, the Examiner requires the Applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, material, and acts perform the function recited in the claim element.

On page 3 of the Office action, the Examiner objected to claims 19-20 and 23-24, stating:

Applicant has evoked sixth paragraph, means-plus-function language to define Applicant's invention. Therefore the Examiner has objected to the claims for the reasons set forth above in the objection to the specification.

Applicant has amended the specification, above, to overcome the objections to the specification and claims 19 and 23-24, and to correct a typographical error.

Applicant respectfully traverses this objection as it applies to claim 20. Claim 20 recites structure, namely "at least one sensor" and is thus not in means-plus-function format.

Application Number 10/057,144  
Amendment dated July 22, 2004  
Reply to Office Action mailed April 22, 2004

Page 8 of 10

Docket No.: AB-209U

***Claim Rejections - 35 USC § 102***

Claims 19, 23 and 25-26 were rejected under 35 U.S.C. 102(b) as being anticipated by Harpstead et al. (U.S. Patent No. 5,697,951). Claim 19 was also rejected under 35 U.S.C. 102(b) as being anticipated by Vaiani et al. (U.S. Patent No. 5,374,285). Claims 19 and 20 were rejected under 35 U.S.C. 102(e) as being anticipated by Flaherty et al (U.S. Patent No. 6,283,951).

Claim 19 has been amended to

- (1) incorporate the subject matter of claim 25, which claim was rejected as anticipated only by Harpstead et al., and to
- (2) clarify that the claimed device is fully implanted.

The Examiner stated that:

Applicant is arguing more narrow than claimed. The device of Harpstead et al. is implantable. Applicant has not claimed that the entire device is fully implanted.

In order to overcome this Harpstead rejection, applicant has amended claim 19 to clarify that the entire device is fully implanted. In order to overcome the Vaiani and Flaherty rejections, claim 19 has been amended to incorporate the subject matter of claim 25. Claim 25 has been canceled. Based on the foregoing, applicants believe that amended claim 19 is in condition for allowance. Acknowledgment of the same is earnestly solicited.

Claim 25 has been canceled, as its subject matter has been incorporated into independent claim 19. Claim 26 has also been canceled as its subject matter is redundant with amended claim 19.

Claims 20, 23 and 24 depend from independent claim 19, so should be allowable for the same reasons given above in support of amended independent claim 19. Acknowledgment of the same is earnestly solicited.

Docket No.: AB-209U

**Conclusion**

In view of the foregoing remarks and amendments, it is respectfully submitted that the rejections have been overcome and that the pending claims are in condition for allowance. An indication of allowability of all pending claims, claims 19, 20, 23 and 24, is earnestly solicited. In the alternative, if it is deemed that the claims are still not in condition for allowance, entry of the amendments is requested, as they narrow the issues for appeal.

The Examiner is invited to telephone the undersigned, Laura H. Bishop, at his convenience should any issues remain after consideration and entry of this response, in order to permit early resolution of the same.

Respectfully Submitted,

2004 July 22  
Date

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